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Attorneys for Defendants White Pine Insurance Company,
Conifer Holdings Inc., Conifer Insurance Company,
and Tony Crylen

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

L & T ENTERPRISES, LLC, dba
GOLDEN SPIKE; and TAMMY
WALTERS,

Plaintiffs,

vs.

WHITE PINE INSURANCE
COMPANY; REZATTO GROUP;
CONIFER HOLDINGS INC.;
CONIFER INSURANCE COMPANY;
TONY CRYLEN; and DOES 1
THROUGH 5,

Defendants.

Cause No.: _____

NOTICE OF REMOVAL

White Pine Insurance Company, incorrectly named in the complaint as White Pines Insurance Company (“White Pine”), Conifer Holdings, Inc. (“CHI”), Conifer Insurance Company (“Conifer”), and Tony Crylen (“Crylen”) (collectively “Defendants”), remove this matter from the Montana Twelfth Judicial District Court, Hill County, to the United States District Court for the District of Montana, Great Falls Division, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. As set forth below, this matter is properly removed on diversity grounds because defendants have complied with the statutory requirements for removal under 28 U.S.C. §§ 1332, 1441 and 1446.

BACKGROUND

1. Plaintiffs filed the action styled *L & T Enterprises LLC, dba Golden Spike; and Tammy Walters vs. White Pine Insurance Company [incorrectly named as White Pines Insurance Company]; Rezatto Group; Conifer Holdings Inc.; Conifer Insurance Company; Tony Crylen; and Does 1 through 5*, Cause No. DV 17-084, in the Montana Twelfth Judicial District Court, Hill County, on July 3, 2017 (“State Court Action”). Plaintiffs L & T Enterprises LLC, dba Golden Spike and Tammy Walters (“Plaintiffs”) seek monetary damages, punitive damages, and costs and attorneys’ fees because they claim defendants violated MONT. CODE ANN. § 33-18-201 in the handling of an insurance claim. Plaintiffs also raise breach of contract and fraud claims based on allegations about representations made during the

handling of an insurance claim. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 3.3(a), true and correct copies of all papers served in the State Court Action are attached as Exhibits A-D (Complaint, Summons, Answer, Hill County Docket Sheet).

2. On May 1, 2018, plaintiffs accomplished formal service of process on defendants by way of the Acknowledgment of Service signed May 1, 2018 and attached hereto as Exhibit E. This Notice of Removal is timely because it is being filed within thirty (30) days of that service. 28 U.S.C. § 1446(b); *Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 119 S. Ct. 1322, 143 L. Ed. 2d 448 (1999).

3. Removal to the United States Court for the District of Montana, Great Falls Division, is proper because this district includes Hill County, Montana. *See* 28 U.S.C. § 106.

4. Pursuant to 28 U.S.C. § 1446(d), defendants will give plaintiffs written notice of the filing of this Notice of Removal and will file a copy of the Notice of Removal with the Clerk of the Montana Twelfth Judicial District Court, Hill County, Montana.

REMOVAL BASED ON DIVERSITY OF CITIZENSHIP

5. The United States District Court for the District of Montana has jurisdiction over the removed State Court Action pursuant to 28 U.S.C. § 1332(a).

There is complete diversity of citizenship and the amount in controversy exceeds the sum of \$75,000.00.

6. Plaintiffs are citizens of Montana because Tammy Walters resides in Havre, Hill County, Montana and because L & T Enterprises LLC is a Montana Domestic Limited Liability Company with a principal place of business in Havre, Hill County, Montana. Exhibit A, State Court Action Complaint, ¶ 2.

7. As alleged by plaintiffs, Rezatto Group “is headquartered in Aberdeen, South Dakota and is a commercial insurance agency specializing in the retail liquor industry.” Exhibit A, State Court Action Complaint, ¶ 5. According to the South Dakota Department of Labor and Regulation’s online License Inquiry Service, Rezatto 3 Inc., Rezatto and Associates, and Rezatto II Inc. are all doing business as Rezatto Group. According to the South Dakota Secretary of State’s website, Rezatto 3, Inc. is an active South Dakota corporation, Rezatto and Associates is a registered DBA Business Name with a principal office in South Dakota, and Rezatto II Inc. is a dissolved South Dakota corporation. Therefore, Rezatto Group is a citizen of South Dakota for federal diversity purposes. *See* 28 U.S.C. § 1332(c).

8. White Pine Insurance Company is a Michigan insurer domiciled in Michigan and maintains its offices in Pennsylvania. Exhibit A, State Court Action Complaint, ¶ 3; Michigan Department of Insurance and Financial Services. White Pine Insurance Company is owned by Conifer Holdings, Inc. White Pine Insurance

Company is a citizen of Michigan for federal diversity purposes. *See* 28 U.S.C. § 1332(c).

9. Conifer Holdings, Inc. is a Michigan corporation with a registered office mailing address in Birmingham, Michigan. Exhibit A, State Court Action Complaint, ¶ 4; Michigan Department of Licensing and Regulatory Affairs. Conifer Holdings, Inc. is a citizen of Michigan for federal diversity purposes. *See* 28 U.S.C. § 1332(c).

10. Conifer Insurance Company is a Michigan insurer domiciled in Michigan with an office in Birmingham, Michigan. Exhibit A, State Court Action Complaint, ¶ 4; Michigan Department of Licensing and Regulatory Affairs. Conifer Insurance Company is a citizen of Michigan for federal diversity purposes. *See* 28 U.S.C. § 1332(c).

11. Tony Crylen maintains an office in Jacksonville, Florida and is a citizen of Florida because he resides in Florida. Exhibit A, State Court Action Complaint, ¶ 6.

AMOUNT IN CONTROVERSY

12. The amount in controversy in this action exceeds \$75,000.00 exclusive of interest and costs. The Complaint is the “initial pleading” under 28 U.S.C. § 1446(c)(2)(A) and seeks special and compensatory damages and punitive damages, but does not contain a demand for a specific amount. Exhibit A, State

Court Action Complaint, Prayer for Relief. The practice in the State of Montana “permits recovery of damages in excess of the amount demanded” within the meaning of 28 U.S.C. § 1446(c)(2)(A).

13. Therefore, this Notice of Removal “may assert the amount in controversy[.]” 28 U.S.C. § 1446(c)(2)(A). This Notice of Removal asserts the amount in controversy exceeds \$75,000.00 exclusive of interests and costs because the liability limits of the underlying policy of insurance exceed \$75,000.00, plaintiffs have made a demand in excess of \$75,000.00, and plaintiffs allege “financial hardships” and “extreme emotional distress.” Exhibit A, State Court Action Complaint, ¶ 13. Plaintiffs raise claims for bad faith, breach of contract, and fraud. Plaintiffs seek punitive damages and attorneys’ fees. The Ninth Circuit Court of Appeals has held that punitive damages are properly included in a calculation of the amount in controversy for purposes of removal on diversity of citizenship grounds. *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1091 (9th Cir. 2003). Courts also include future attorneys’ fees in a calculation of the amount in controversy for purposes of removal on diversity of citizenship grounds. *See, e.g., Feller v. Hartford Life & Acc. Ins. Co.*, 817 F. Supp. 2d 1097, 1101 (S.D. Iowa 2010). All of the aforementioned information taken together forms an objectively reasonable basis for removal.

14. Therefore, although defendants do not concede liability for any claims

and do not concede that any of plaintiffs' claims have merit, this court has jurisdiction over this matter pursuant to 28 U.S.C. §1332 because this is an action where the amount in controversy exceeds the sum or value of \$75,000.00 and there is complete diversity of citizenship between Plaintiffs and all Defendants.

REMAINING REQUIREMENTS

15. Pursuant to 28 U.S.C. § 1446(d), defendants will promptly serve written notice of the filing of this Notice of Removal upon all other parties and will promptly file a copy of this Notice of Removal with the Clerk of Court for the Montana Twelfth Judicial District Court, Hill County.

16. Pursuant to 28 U.S.C. § 1446(a), defendants file together with this Notice of Removal a copy of all process, pleadings, and orders served in this case, attached hereto as Exhibit A-D. These attachments constitute all documents known by defendants to have been served in the case.

RESERVATION OF RIGHTS

17. Defendants deny the allegations contained in the State Court Action and file this Notice of Removal without waiving any defenses, objections, exceptions, or obligations that may exist in its favor in either state or federal court.

18. Further, in making the allegations in this Notice of Removal, defendants do not concede that the allegations in the State Court Action are accurate, that plaintiffs have asserted claims upon which relief can be granted, or that recovery

of any of the amounts sought is authorized or appropriate.

19. Defendants also reserve their rights to amend or supplement this Notice of Removal. If any questions arise as to the propriety of removing this matter, defendants request the opportunity to present a brief, oral argument, and any further evidence necessary in support of their position that the State Court Action is removable.

CONCLUSION

20. Based on the foregoing, defendants respectfully remove this action from the Montana Twelfth Judicial District Court, Hill County, to this court pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.

DATED this 25th day of May, 2018.

/s/ William J. Mattix
CROWLEY FLECK PLLP
Attorney for Defendants
White Pine Insurance Company,
Conifer Holdings, Inc.,
Conifer Insurance Company,
Tony Crylen

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the following counsel of record, by the means designated below, on this 25th day of May, 2018:

<input checked="" type="checkbox"/> U.S. Postal Service <input type="checkbox"/> FedEx <input type="checkbox"/> E-mail	Brian Lilletvedt BOSCH, KUHR, DUGDALE, MARTIN & KAZE, PLLP P. O. Box 7152 Havre, MT 59501-7151 billetvedt@bkdlaw.org
<input checked="" type="checkbox"/> U.S. Postal Service <input type="checkbox"/> FedEx <input type="checkbox"/> E-mail	Gary M. Zadick UGRIN ALEXANDER ZADICK, P.C. P. O. Box 1746 Great Falls, MT 59403-1746 gmz@uazh.com

/s/ William J. Mattix

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